



# CITY OF SNOHOMISH

*Founded 1859, Incorporated 1890*

116 UNION AVENUE λ SNOHOMISH, WASHINGTON 98290 λ TEL (360) 568-3115 FAX (360) 568-1375

## NOTICE OF REGULAR MEETING

### PLANNING COMMISSION

George Gilbertson Boardroom  
Snohomish School District Resource Center  
1601 Avenue D

**WEDNESDAY**

**May 3, 2017**

**6:00 p.m.**

1. **CALL TO ORDER**
2. **FLAG SALUTE**
3. **ROLL CALL**
4. **APPROVAL OF AGENDA ORDER**
5. **APPROVAL** of the minutes of the April 5, 2017, regular meeting (*P.1*)
6. **GENERAL PUBLIC COMMENTS** on items not on the agenda
7. **VESTING CODE AMENDMENT PUBLIC HEARING** (*P.3*)
  - a. Chair opens hearing
  - b. Staff presentation
  - c. Commission questions
  - d. Public testimony
  - e. Close hearing
  - f. Deliberations
8. **DIRECTOR'S REPORT**
9. **ADJOURNMENT**

**NEXT MEETING:** The next regular meeting is scheduled for **Wednesday, June 7, 2017**, at 6:00 p.m. in the George Gilbertson Boardroom, Snohomish School District Resource Center, 1601 Avenue D, Snohomish, WA 98290.



## **AGENDA ITEM 5**

### **CITY OF SNOHOMISH REGULAR MEETING OF THE PLANNING COMMISSION MEETING MINUTES April 5, 2017**

1. **CALL TO ORDER** The regular meeting of the Planning Commission was opened by Chair Hank Eskridge at 6:00 p.m. in the George Gilbertson Boardroom, 1601 Avenue D.
2. **FLAG SALUTE**
3. **ROLL CALL**

#### **COMMISSIONERS PRESENT:**

Christine Wakefield Nichols  
Gordon Cole  
Laura Scott  
Hank Eskridge, Chair  
Steve Dana  
Terry Lippincott  
Van Tormohlen

#### **STAFF:**

Glen Pickus, Planning Director  
Katie Hoole, Permit Coordinator

#### **OTHERS PRESENT:**

Tom Hamilton

#### **4. APPROVAL OF AGENDA ORDER**

Mr. Cole moved to approve the agenda order; Ms. Lippincott seconded and the motion passed 7-0. Ms. Lippincott added that she would like to provide an update on the Parks Board.

#### **5. APPROVAL of the minutes of the March 1, 2017, regular meeting**

Ms. Scott noted a correction that Mr. Eskridge should be identified as Chair. Mr. Cole moved to approve the minutes as amended, and Ms. Scott seconded. The motion passed 7-0.

#### **6. GENERAL PUBLIC COMMENTS on items not on the agenda**

There were no public comments on items not on the agenda.

#### **7. DISCUSSION ITEMS**

##### **a. Shoreline Master Program**

Mr. Pickus provided an update on the City's resurrected Shoreline Master Program (SMP) and timeline for completion. Commissioners discussed how the Department of Ecology (DOE) rules seemed to focus on undeveloped shorelines and conflict with historic downtown Snohomish. Mr. Pickus believes the DOE recognizes that their preferences don't necessarily work with historic, fully-developed districts on the water. The language has been tweaked in the City's SMP to call that area something different—the Historic Riverfront Environment—linking the words "historic" and "river" to make it clear it's a special case.

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### **b. Comparable Cities to Snohomish**

Mr. Pickus asked the Commission to review the list of comparable cities and determine which were the most like Snohomish and which they want Snohomish to be compared to. Staff would then use this list for comparisons when code amendments are presented.

Mr. Cole said there were two aspects to consider: what the cities are doing in regards to a particular issue, and whether they are potential competitors for services or businesses.

Mr. Dana added that Snohomish adopted a different view of growth than its neighboring peer cities. We should continue to examine how our code language deals with growth, appearance, traffic, mitigation, etc. and compare that to our neighbors and peer cities to see what in our plans distinguishes us from them.

Mr. Pickus confirmed Commissioners would prefer to use a longer list of cities for staff to choose from, depending on the topic. The comparable cities are Stanwood, Monroe, Port Townsend, Lake Stevens, Snoqualmie, La Conner, Poulsbo, Lynden, and Bothell.

Ms. Lippincott attended the Parks Board meeting; the members were surprised she was there, as they hadn't heard about cross-attending other boards and commissions meetings. Their biggest discussion was what to do with the Hal Moe Pool site. They also discussed upgrading the existing park signs and a potential dog park.

Mr. Pickus said Commissioners should feel free to attend the other boards and commissions meetings at any time.

Mr. Cole mentioned that the Economic Development Committee is formalizing their work plan right now and has a dynamite new chair.

### **8. DIRECTOR'S REPORT**

Mr. Pickus said the City Council adopted the fence code ordinance as recommended by the Commission. Council also adopted the construction noise ordinance, and gave staff the go-ahead to pursue the development agreement ordinance.

The application period for the Comprehensive Plan amendment annual docketing process ended on March 31<sup>st</sup>, and there were no applications. Mr. Pickus handed out an updated work plan, noting that it includes looking at amending the docketing process later this year. Next month's meeting will have two public hearings: development agreements and vesting.

### **9. ADJOURNMENT**

The meeting adjourned at 6:55 p.m.

Approved this 3<sup>rd</sup> day of May, 2017

By: \_\_\_\_\_  
Commissioner Hank Eskridge, Chair

## **AGENDA ITEM 7**

**Date:** May 3, 2017  
**To:** Planning Commission  
**From:** Glen Pickus, Planning Director  
**Subject:** **Vesting and Complete Applications Code Amendment Public Hearing**

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**SUMMARY:** In land use, vesting refers to the right an applicant obtains to develop a project pursuant to regulations in place at a specified time, typically upon application. Court cases in recent years have altered long-held assumptions and application of vesting rules. Snohomish Municipal Code's (SMC) rules regarding vesting therefore require updating to be consistent with recent case law in order to ensure principles of fairness and due process for applicants are preserved.

**BACKGROUND:** SMC 14.55.012 establishes vesting rights in the City. In the first section, it refers to the Vested Rights Doctrine that had been established over the years through court decisions. However, a 2014 court decision found the only vesting rights that exist are those established by statute or ordinance. In other words, since the Vested Rights Doctrine was created by case law and not statute it is no longer a valid way to establish vesting rights. The City code requires revision to eliminate the reference to the Vested Rights Doctrine.

Currently, State statutes only confer vesting rights to building permits, subdivisions, and development agreements. If the desire is to confer vested rights to other types of applications, as the Vested Rights Doctrine did, then a revised SMC must state which applications will enjoy vested rights.

Typically vested rights are established when a complete application is submitted. An application is determined to be complete when all required items are submitted with the application. Required items include things like the application form itself, application fees, plans, engineering reports and critical areas analysis.

A 2016 court decision clouds the vesting issue as it relates to vesting of regulations the City is mandated to adopt by either the State or Federal government. The decision suggests the vesting of permit applications related to those mandated regulations can only come from the State and Federal regulations. Examples of mandated regulations include shoreline and floodplain development regulations. If the court decision holds then the City cannot vest applications to develop within the shoreline jurisdiction or in a floodplain. However, the legal process has not yet run its course on this issue, so the 2016 court decision is not yet the prevailing determination on vesting.

### **PROPOSALS:**

#### **Consolidate Determination of Completeness Regulations**

Currently, the SMC has one section (SMC 14.35.030) called "Determination of Completeness" applicable to Type 3 permits and three sections (SMC 14.40.030, 14.45.030, and 14.50.030)

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called “Determination of Completeness and Notice of Application” applicable to Type 4-6 permits, respectively.

The proposal is to place regulations for determining the completeness of applications in a single new section, SMC 14.55.025, which would be applicable to all permit types.

To do this, SMC 14.35.030 would be repealed and not replaced and SMC 14.40.030, 14.45.030, and 14.50.030 would be amended to remove references to determination of completeness so they will only be about Notices of Application (See Attachment A).

### **Create New Determination of Completeness Section**

The proposal is to create a new section, SMC 14.55.025 – Determination of Completeness, that would be applicable to all permit types.

The new section (Attachment B) will address submittal requirements that the code currently only addresses minimally. The new language authorizes the Planning & Development Services Department to establish a list of submittal requirements for each type of permit. Items that must be submitted will be required to meet two basic criteria:

- Contain at least the minimum amount necessary to allow for review of the project; and
- Be comprehensible, legible, and in an acceptable format.

With these criteria applicants will be prevented from making rush submittals that are inadequate merely to establish vesting rights.

### **Create New Vesting Section**

The existing vesting section, SMC 14.55.012 (Exhibit C), refers to the now outdated Vested Rights Doctrine. That section will be repealed and replaced with an entirely new section that is also renumbered to be SMC 14.55.028 (Attachment C) so it appears next to the Determination of Completeness Section (SMC 14.55.025).

The new section removes all reference to the Vested Rights Doctrine and instead lists the various types of applications that can be vested. All development permit applications are included on the list with the exception of temporary permits and permits related to utilities and stormwater.

Additional language is also included to state the purpose of the vesting regulations, defining vesting and development regulation, and explaining vesting of subsequent applications related to the original application.

**RECOMMENDATION: Open the public hearing to consider the proposed code amendments. After closing the public hearing and deliberating pass the following motion:**

**“Motion to adopt the Findings of Facts & Conclusions and to recommend City Council approval to repeal SMC 14.35.030 and 14.55.012; to amend SMC 14.40.030, 14.45.030, and 14.50.030; and to adopt new sections SMC 14.55.025 – Determination of Completeness and SMC 14.55.028 – Vesting of Applications.”**

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### **ATTACHMENTS:**

- A. Proposed amendments to SMC 14.40.030, 14.45.030, and 14.50.030
- B. Proposed new SMC 14.55.025 – Determination of Completeness
- C. Proposed new SMC 14.55.028 – Vesting of Applications
- D. Existing SMC 14.55.012
- E. Findings of Fact & Conclusions

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### ATTACHMENT A

#### Proposed Consolidation of Complete Application Regulations

**14.40.030 ~~Determination of Completeness and~~ Notice of Application.**

**14.45.030 ~~Determination of Completeness and~~ Notice of Application.**

**14.50.030 ~~Determination of Completeness and~~ Notice of Application.**

~~A. Within 28 days of submittal, the City Planner shall:~~

- ~~1. Send the applicant either a determination of completeness or a notice stating information required to complete the application, and~~
- ~~2. Advise the applicant of other agencies that may have jurisdiction over the proposal.~~

~~B. Within 14 days of submittal of additional information as required above, the City Planner shall send the applicant either a determination of completeness or another notice stating information required to complete the application.~~

~~C. Within 14 days of determination of completeness of an application, the City Planner shall publish a notice of application in accordance with SMC 14.55.040. The public comment period for the notice of application shall be 14 days.~~



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### ATTACHMENT B

#### Proposed Complete Application Regulations

#### **SMC 14.55.025 Determination of Completeness**

##### **A. Completeness determination.**

1. Determination of Completeness. The Director or designee shall determine whether a project permit application is complete or incomplete within 28 days after receiving an application. The determination shall be in writing and mailed, faxed, e-mailed, or delivered to the applicant or the applicant's representative within the required time period. The determination shall state:
  - a. That the application is complete; or
  - b. That the application is incomplete and include a statement as to necessary actions to make the application complete.
    - i. If the applicant does not submit the required information within 90 days after receiving the determination that their application was incomplete, the Director or designee shall make findings that the application has lapsed for failure to submit the necessary information in a timely manner and close the permit application file.
    - ii. The Director may grant time extensions to submit the required information, not to exceed an additional 90 days.
    - iii. When applications lapsed for failure to submit the required information within the necessary time period, or when the applicant requests their application be withdrawn, the applicant may obtain a refund of the unused portion of the application fee by submitting a written request to the Director. If a Notice of Application has been issued then no refunds shall be issued. Refunds shall be processed in accordance with the City's normal refund practices.
2. Resubmittals. If the Director or designee determines an application is incomplete and the applicant submits additional documents identified by the Director or designee as necessary for a complete application, the Director or designee shall notify the applicant within 14 days of the submittal that the application is complete or what additional information is necessary to make the application complete.
3. Department's Failure to Provide a Determination of Completeness. If the department has not provided a determination of completeness as described above within 28 days after receiving an application, the application shall be deemed complete.
4. Identification of Other Agencies with Jurisdiction. A written determination of completeness shall, to the extent known by the department, identify other local, state, or federal agencies with jurisdiction. The department may include other information in the determination.

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### **B. Submittal requirements.**

1. Submittal Criteria. A land use permit application is complete for the purposes of this section when it meets the submittal requirements established by the department.  
Required submittals shall meet the following criteria:
  - a. Submittals shall contain at least the minimum amount of information necessary to allow for review of the project to progress even though additional information may be required or project modifications may be undertaken subsequent to the initial project review; and
  - b. Submittals shall be in comprehensible, legible, and in a format typical for the information being provided.
2. Change in Submittal Requirements. The Director or designee shall establish and may revise written submittal requirements for each type of land use, project, or other development permit or approval type. The requirements shall be made available to the public in a checklist or other form that clearly describes the material and number of copies that must be submitted for an application to be considered complete. The department shall provide public notice of any changes to the submittal requirements at least 30 days prior to their effective date.
3. Waiver of Submittal Requirements. Submittal requirements shall not be waived, except that the department may determine in writing that a particular requirement is not applicable upon a clear showing by the applicant that the requirement is not relevant to the proposed action and is not necessary to demonstrate compliance with applicable requirements.
4. Additional Information. Even after a determination of completeness, the department may require the submittal of additional information or studies as it determines necessary for review of the application. The submittal of additional information or studies shall not affect the validity of the vesting of the application pursuant to SMC 14.55.028, unless the information is requested because incorrect information was submitted by the applicant and if the incorrect information would materially affect the final decision on the application.

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### ATTACHMENT C

#### Proposed Vesting Regulations

##### **SMC 14.55.028 Vesting of Applications**

- A. Purpose: The purpose of this section is to implement local vesting regulations that are best suited to the needs of the City and consistent with state law. This section is intended to provide property owners, permit applicants, and the general public assurance that the development regulations for project development will remain consistent during the life of an application.
- B. Vesting: An application for a land use, project, or other development permit or approval type which vests shall be considered under the development regulations in effect on the date the application is determined to be complete pursuant to SMC 14.55.025.
- C. Applications which Vest: The following applications for a permit or approval types as set forth in Titles 14 and 19 SMC shall vest to the development regulations in effect at the time the application is determined to be complete pursuant to SMC 14.55.025:
  - 1. Administrative Development Plan
  - 2. Binding Site Plan
  - 3. Boundary Line Adjustment
  - 4. Building Permit
  - 5. Conditional Use Permit
  - 6. Development Agreement
  - 7. Fence Permit
  - 8. Flood Hazard Area Development Permit
  - 9. Recorded Development Plan
  - 10. Retaining Wall Permit
  - 11. Right-of-way Permit
  - 12. Shoreline
    - a. Conditional Use Permit
    - b. Substantial Development Permit
    - c. Variance
  - 13. Subdivisions
    - a. Preliminary Fee Simple Unit Lot Subdivision
    - b. Preliminary Subdivision (Preliminary Plat)
    - c. Preliminary Short Subdivision (Preliminary Short Plat)
    - d. Planned Residential Development
  - 14. Sign Permit

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15. Sidewalk Use Permit

16. Variance

- a. Minor
- b. Major

D. Subsequent Applications. Development permit applications that are subsequent and related to the development identified in subsection C above, shall vest to the development regulations in effect at the time the precedent application for development identified in subsection C above was determined to be complete pursuant to SMC 14.55.025. However, any subsequent permit application must be determined to be complete pursuant to SMC 14.55.025 prior to the expiration date of the precedent permit(s) or approval(s) issued for the application types listed in Subsection C above.

E. Exceptions: The provisions of this section shall not be applicable to:

- 1. Impact mitigation fees as established in SMC 14.290, SMC 14.295, and SMC 14.300, or those adopted after the effective date of this ordinance;
- 2. Permit processing fees and taxes or administrative fees; and
- 3. Applications for the following permit or approval types, including when the application is a subsequent application to an application that has vested. However, if vesting rights provided elsewhere in this code or in state and federal regulations exist, they may be applicable.
  - i. All permit or approval types set forth in Title 15 SMC;
  - ii. All permit or approval types set forth in Title 20 SMC;
  - iii. Comprehensive Plan Amendments as set forth in Title 14 SMC;
  - iv. Rezones as set forth in Title 14 SMC; and
  - v. Temporary Permits as set forth in Title 14.

F. For the purpose of this section, "development regulation" means those provisions of Snohomish Municipal Code that exercise a restraining or directing influence over land, including provisions that control or affect the type, degree, or physical attributes of land development or use and shall not include:

- 1. Permit processing fees and taxes or administrative fees;
- 2. Procedural rules and regulations; and
- 3. Regulations that specify or are based upon adopted SEPA policies for the exercise of SEPA substantive authority, including the SEPA ordinance;

G. A complete building permit application shall always be subject to that version of Title 19 SMC in effect at the time the building permit application is submitted.

H. Notwithstanding any other provision in this section, any application dependent on approval of a rezone application shall not vest until the underlying rezone is approved.

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- I. Review of a project proposal during a pre-application process and/or conference does not vest the application.
- J. Stormwater regulations, environmental impact mitigation fees, and utility connection fees cannot be vested through the provisions of this action.

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### ATTACHMENT D

#### Current Vesting Regulations

##### **14.55.012 Vesting.**

- A. An application for a permit to be processed under the City's Land Use Development Code and that is subject to the Vested Rights Doctrine under Washington State law, vests at such time as a complete application is filed with the Department and all required permit fees are paid. An application is "complete" on the date a complete application is filed, as subsequently determined in the letter of completeness issued by the City Planner or his or her designee.
- B. A permit application that is vested under section A shall be reviewed under the development regulations in effect on the date when the complete application is filed.
- C. Nothing herein shall be construed to restrict the City from imposing conditions on permits pursuant to the State Environmental Policy Act, RCW Chapter 43.21C, WAC Chapter 197-11, and SMC Chapter 14.90, as long as such conditions do not change any of the requirements of the underlying code section pertinent to the particular development permit.
- D. Nothing herein shall be construed to prevent the City from imposing new regulations necessary to protect the public health and safety, including, but not limited to, the requirements of the building, health, and fire codes, as now adopted or as subsequently amended.
- E. The following are not subject to the Vested Right Doctrine under Washington State law and vesting under this section:
  - 1. Applications for rezones and comprehensive plan amendments;
  - 2. Applications for site plan development review;
  - 3. Fees associated with permits issued under the Land Use Development Code, including but not limited to fees for permit review, impact mitigation, general City services, and/or utility connections.

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### ATTACHMENT E

#### **Snohomish Planning Commission Findings of Fact and Conclusions**

**Based on the review of the proposed changes to complete applications and vesting regulations, the Planning Commission of the City of Snohomish makes the following Findings of Fact:**

1. The vesting regulations described in Snohomish Municipal Code 14.55.012 are out of date and need to be updated primarily because the regulations make applications subject to the Vested Rights Doctrine, which recent court decisions have determined to be an invalid way of establishing vested rights.
2. The regulations establishing the process for determining when development applications are complete are located in four separate sections of Snohomish Municipal Code and do not provide enough detail regarding required submittal items which makes the process subject to abuse in order to establish vesting rights.
3. Pursuant to RCW 36.70A.106 the State of Washington Department of Commerce was notified on April 11, 2017 of the City's intent to amend its development regulations for fences and freestanding walls. An acknowledgment letter from the Department of Commerce stating the procedural requirement was met was received on April 11, 2017.
4. The Planning Commission discussed the proposed code amendments at their March 1, 2017 meeting.
5. The City Council discussed the proposed code amendments at their May 2, 2017 meeting.
6. The Planning Commission held a public hearing on the proposed code amendments on May 3, 2017.
7. At the conclusion of the public hearing on May 3, 2017, the Planning Commission voted to recommend City Council approval of the proposed amendments.
8. The proposed amendments will amend Snohomish Municipal Code vesting regulations.
9. The proposed amendments will amend Snohomish Municipal Code regulations regarding the determination of completeness of development permit applications.

**Based on the foregoing Findings of Fact, the Snohomish Planning Commission hereby makes the following conclusions:**

1. The proposed amendments update the regulations for establishing vesting rights to be consistent with current case law.
2. The proposed amendments consolidate regulations for determining the completeness of development permit applications into one section that will make understanding and administering the regulations easier.

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3. The proposed amendments for determining the completeness of development permit applications provide safeguards to ensure insufficient applications do not gain vesting rights.
4. The proposed amendments are consistent with Washington State law.
5. The proposed amendments implement and are consistent with the goals and policies of the City of Snohomish Comprehensive Plan.
6. The proposed amendments protect the public health, safety, and general welfare.
7. The proposed amendments do not result in an unconstitutional taking of private property for a public purpose and they do not violate substantive due process guarantees.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Hank Eskridge, Planning Commission Chair